

# New Judgment in Data Scraping Dispute Could Impact Hedge Fund Managers

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Below is a summary of a recent development that may be of interest from our Technology, Media & Telecommunications (TMT) practice Group. Our TMT, Regulatory and Securities Litigation Groups have been working closely with our Hedge Fund Group in counseling hedge fund managers with respect to the complex regulatory, compliance and contractual issues raised by their data aggregation, web scraping and other data science methods and practices (both internally developed and externally sourced).

## **From Proskauer's New Media and Technology Law Blog:**

For years, craigslist has aggressively used technological and legal methods to prevent unauthorized parties from scraping, linking to, or accessing user postings for their own commercial purposes. In its latest judicial victory, on April 13, 2017, craigslist obtained a [\\$60.5 million judgment against Radpad, Inc.](#), on various claims relating to harvesting content from craigslist's site and sending unsolicited commercial emails to craigslist users. ([Craigslislist, Inc. v. RadPad, Inc.](#), No. 16-01856 (N.D. Cal. Apr. 13, 2017)).

This judgment relates to an earlier Craigslist case [against another aggregator](#). In that case, the aggregator was scraping craigslist content (despite having received a cease and desist letter informing it that it was no long permitted to access the site) and offering the data to outside developers through an API. (See generally [Craigslislist, Inc. v. 3Taps, Inc.](#), 2013 WL 1819999 (N.D. Cal. Apr. 30, 2013)). In 2015, craigslist settled the *3Taps* lawsuit, with relief against various defendants that included monetary payments and a permanent injunction barring unauthorized access to craigslist content and to circumvent any technological blocks against spidering or scraping activities.

Last year, however, [craigslist revived the 3Taps dispute when it filed a complaint against the real estate listing site RadPad](#), an entity that had allegedly received scraped craigslist data from 3Taps before the 3Taps case was settled. In its [complaint](#), craigslist claimed that after the 3Taps litigation was settled, RadPad and its agents began their own independent efforts to scrape craigslist site, despite receiving a cease and desist letter from craigslist barring Radpad from using the craigslist site. Craigslist alleged that RadPad used sophisticated techniques to evade detection and scrape thousands of user postings and thereafter harvested users' contact information to send spam in an effort to entice users to switch to RadPad's services. (See [Craigslist, Inc. v. RadPad, Inc.](#), No. 16-1856 (N.D. Cal. filed Apr. 8, 2016)). In its complaint seeking compensatory damages and injunctive relief, craigslist brought several causes of action, including breach of contract, CAN-SPAM, Computer Fraud and Abuse Act (and California state law equivalent), and copyright infringement.

During the course of the litigation, Radpad became insolvent and its attorney withdrew from representation, essentially allowing craigslist to obtain what amounts to a default judgment.

The relief included:

- Copyright: \$20.4 million for copyright infringement based on RadPad's scraping of various user postings from craigslist's site. Interestingly, in order to have standing to bring infringement claims against certain aggregators such as 3Taps, craigslist changed its terms of service for a limited time to gain an exclusive assignment of copyright rights to user content.
- Breach of contract: \$160,000 for breach of craigslist's terms of use based on the scraping activities.
- CAN-SPAM: \$40 million, based upon violations from 400,000 emails. Notably, the court stated that Radpad had violated CAN-SPAM by sending emails that, among other things, contained false and misleading header information and subject lines and were sent through a whitelisted third party email delivery service to bypass craigslist's spam filters.
- Injunctive relief: Radpad and its employees and agents are enjoined from accessing or distributing any user content on craigslist, as well as barred from sending any commercial email to any craigslist user in violation of CAN-SPAM, among other

things. Radpad is also prohibited from using technological means to scrape craigslist's site or circumvent any of craigslist's access controls (e.g., IP address blocks), or from purchasing or harvesting craigslist user postings.

While it is doubtful that craigslist will ever collect its sizeable judgment, it will certainly hold the specter of such a large monetary award as an example of the potential consequences of engaging in unauthorized commercial scraping or spidering activities that run counter to craigslist's terms of use. We will continue to watch this case and similar data scraping disputes carefully.

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